

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 IN SEATTLE

4 ROBERT KELLY,)
5)
6 Plaintiff,) No. C 04-2338RSM
7)
8 v.)
9)
10 THE CORPORATION OF THE PRESIDENT)
11 OF THE CHURCH OF JESUS CHRIST)
12 OF LATTER-DAY SAINTS)
13)
14 Defendant.)
15)

16 VERDICT
17
18

19 BEFORE THE HONORABLE RICARDO S. MARTINEZ
20
21

22 October 12, 2006
23
24

25 APPEARANCES:

For the Plaintiff: Michael T. Pfau
Tim Kosnoff
and
Michael Rosenberger
Attorneys at Law

For the Defendant: Charles Gordon
and
Jeffrey Tilden
Attorneys at Law

1 THE COURT: Counsel, the jury has indicated a
2 verdict. Please bring in the jury.

3 (At this time the jury entered the courtroom.)

4 THE COURT: Juror Number 6, Mr. Dukenthaler, you
5 are the foreperson?

6 JUROR NO. 6: Yes, your Honor.

7 THE COURT: Has the jury reached a verdict?

8 JUROR NO. 6: Yes, they have.

9 THE COURT: Would you hand the jury forms to our
10 clerk? The Court will announce the verdict of the jury.
11 The following along with the special verdict form: Question
12 number one: "Did plaintiff commence this action within the
13 period of time required by law?" Answer: "Yes."

14 Question number two: "Do you find that the
15 defendant is negligent in this case?" Answer: "Yes."

16 Question number three: "Was such negligence a
17 proximate cause of injury to plaintiff?" Answer: "Yes."

18 Question four: "Do you find that any of the
19 following non-parties were negligent in this case?" Answer:
20 "Herman Allenbach, yes; Dorothy Kelly, yes; Jerry Kelly,
21 yes."

22 Question five: "Do you find that such
23 negligence, if any, was a proximate cause of injury to
24 plaintiff?" Answer: "Herman Allenbach, yes; Dorothy Kelly,
25 yes; Jerry Kelly, yes."

1 Question six: "Do you find that Herman
2 Allenbach was an agent of defendant acting within the scope
3 of his authority with respect to the acts or omissions
4 regarding Mr. Loholt?" Answer: "No."

5 Question eight: "Assume that 100 percent
6 represents the total combined negligence that proximately
7 caused plaintiff's injuries. What percentage of this total
8 negligence is attributable to defendant and what percentage
9 is attributable to each non-party whose fault was found by
10 you, if any?" Answer: "Defendant, 25 percent; Herman
11 Allenbach 45 percent; Dorothy Kelly, Jerry Kelly 15 percent
12 each."

13 Question nine: "What do you find of the amount
14 of plaintiff's compensatory damages?" Answer: "\$1,400,000."

15 Question ten: What percentage of damages in
16 your answer to question nine were caused by negligent
17 conduct and what percentage were caused by Mr. Loholt's
18 intentional conduct?" Answer: "Negligent 25 percent,
19 intentional 75 percent."

20 The next thing I am going to do is poll the
21 jury. By that I am going to ask you a question, simply to
22 be answered yes or no. Actually two questions, yes or no.

23 All right. Starting with Juror Number 1,
24 Ms. Anderson, is this your verdict?

25 JUROR NO. 1: Yes, it is.

1 THE COURT: Is it the verdict of the jury.

2 JUROR NO. 1: Yes.

3 THE COURT: Juror Number 2, Ms. Kelly, is your
4 verdict?

5 JUROR NO. 2: Yes.

6 THE COURT: And the verdict of the jury?

7 JUROR NO. 2: Yes.

8 THE COURT: Juror Number 3, Ms. Evans, is this
9 your verdict?

10 JUROR NO. 3: Yes.

11 THE COURT: And the verdict of the jury?

12 JUROR NO. 3: Yes.

13 THE COURT: Juror Number 4, Ms. Vant, is this your
14 verdict?

15 JUROR NO. 4: Yes.

16 THE COURT: And the verdict of the jury?

17 JUROR NO. 4: Yes.

18 THE COURT: Juror Number 5, Mr. Anderson, is this
19 your verdict?

20 JUROR NO. 5: Yes.

21 THE COURT: And the verdict of the jury?

22 JUROR NO. 5: Yes.

23 THE COURT: Juror Number 6, Mr. Dukenthaler, is
24 this your verdict?

25 JUROR NO. 6: Yes.

1 THE COURT: And the verdict of the jury?

2 JUROR NO. 6: Yes.

3 THE COURT: Juror Number 7, Mr. Sefas, is this
4 your verdict?

5 JUROR NO. 7: Yes.

6 THE COURT: And the verdict of the jury?

7 JUROR NO. 7: Yes.

8 THE COURT: Juror Number 8, Mr. Galvin, is this
9 your verdict?

10 JUROR NO. 8: Yes.

11 THE COURT: And the verdict of the jury?

12 JUROR NO. 8: Yes.

13 THE COURT: Juror Number 9, Mr. McGrath, is this
14 your verdict?

15 JUROR NO. 9: Yes.

16 THE COURT: And the verdict of the jury?

17 JUROR NO. 9: Yes.

18 THE COURT: Madam Clerk, the verdict form appears
19 to be in order. The jurors having answered unanimously the
20 verdict form will be accepted by the Court. All right.
21 That completes your service as jurors on this particular
22 case. On behalf of all the judges of our district and
23 certainly on my own behalf, I want to thank you so very much
24 for participating with us in this process. I think a couple
25 of you had been jurors before on other matters, but probably

1 nothing like this. I hope that the process itself, going
2 through this process, sitting in the courtroom listening to
3 the witnesses testify, listening to the attorneys ask
4 questions and get answers showed you how important your role
5 as a juror is in deciding these types of issues.

6 You understand that every now and then judges
7 serve the role of both judge and jury. That is called a
8 bench trial. Sometimes there will be no jury, and I have to
9 decide not only the legal issues but also the factual issues
10 that may come up. That always makes it tough for me. For
11 me it is always better when we have people like you from the
12 community sit and listen to a dispute amongst parties and
13 then resolve that dispute under our system.

14 I think the attorneys put it very well in their
15 closing arguments when they told you about the statistics
16 involving how many people will be called to jury duty. You
17 understand that the system would not function without it.

18 There is nothing magical about the system. It
19 is different around the world. If you travel to many other
20 countries -- There are many countries that do not have the
21 jury system. There are some countries that have a jury
22 system and do it differently. In Brazil, for example, they
23 have a jury like this, criminal and civil matters. The jury
24 does not deliberate. At the end of the trial, the minute it
25 is done, the jurors are asked to vote, the majority wins.

1 That's all it takes.

2 We have a different system. We believe that
3 this system works for us. I have a deep and abiding belief
4 in the jury system. And it would not work without people
5 like you being willing to give of your time and your effort
6 to do this with us.

7 So I now release you from the Court's earlier
8 instructions. You are free to discuss this case with
9 anyone. You are just as free to say, no thanks, if anyone
10 asks you any questions about it, I don't want to discuss it.

11 The attorneys in federal court are not allowed
12 to have contact with you. They are not allowed to talk with
13 you. But your friends, anyone else, you are free to tell
14 them whatever you want.

15 The notes that you took will be destroyed. If
16 you want them, rip them out, you are free to take them with
17 you. Just remember, now once you leave the courthouse with
18 those particular notes I don't want them just flying
19 everywhere if you understand what I'm saying. The
20 discussion that took place back there is strictly
21 confidential amongst you that make up the jury. So remember
22 that when you discuss the matter, if you choose to discuss
23 the matter with anyone else, a certain amount of
24 confidential information that may have been given to you by
25 other people back there, and how you relay that to other

1 people I think is sometimes a very sensitive thing. So just
2 think about it before you start making comments. Other than
3 that, as I said, you are free to discuss it with anyone, you
4 are just as free to say no thanks, I care to make no
5 comment, and no one will ask you anything further.

6 Just do me one favor, and for the other judges
7 of this district, for all the judges in our state, if you
8 ever hear of anyone saying to you, oh, I just got this
9 summons in the mail to go to jury duty, and I am trying to
10 figure out how to get out of it, before you answer how to
11 get out of it, you tell them what your experience was like,
12 whether you found it good, bad, frustrating, whatever. You
13 tell them what your experience was like. But also remind
14 them that if everybody gets out of it then we don't have the
15 jury system that we need to be able to make these very
16 difficult decisions.

17 Thank you all so very much. You are excused.
18 (At this time the jury left the courtroom.)

19 THE COURT: You may be seated. Counsel, the
20 jurors had sent out several other additional questions
21 today, aside from the one we spoke of the other day. The
22 questions were fairly easily answered by this Court, but I
23 want you to see them. We have obviously got records of
24 every question they sent out. I want you to see them and
25 see the answers that the Court sent back before you will be

1 excused. Counsel, as you remember, the very first question
2 they sent out, "can we obtain a copy of the law regarding
3 the statute of limitations as referenced in Instruction
4 Numbers 24 and 25?" And we discussed that one. And the
5 Court's response was to actually send in a copy of the
6 statute.

7 The other question was --

8 MR. KOSOFF: Your Honor, before you go on to the
9 next one I would like to the record to reflect in that
10 conference call we had about that instruction that we asked
11 the Court to provide the additional statute of limitations
12 instructions, but also, short of that, that the Court give
13 them the entire statute with the legislative intent findings
14 as well. And I understand that didn't become an issue with
15 the jury, but I would like the record to reflect that we did
16 ask the Court to reconsider giving them the entire
17 instructions on statute of limitations, and the Court
18 declined to do that.

19 THE COURT: Yes, you did. For purposes of our
20 record, let me indicate the defense actually objected to
21 having anything further going into the jury regarding
22 anything further from that statute. As it turns out,
23 Mr. Kosnoff, it didn't have an impact here.

24 The next question that came out from the jury,
25 actually a series of questions -- You are going to have to

1 be looking at your verdict form to follow the questions.
2 The question is: "Question number seven, is this the
3 correct question? It appears it is almost a duplicate of
4 number eight, except one of the answers for number eight
5 includes Herman Allenbach as an option for non-party.
6 Should there be another question for number seven?" The
7 Court's response: "Please reread, questions four, five and
8 six."

9 Question two: "If we choose to award damages,
10 can we require Mr. Kelly to attend treatment therapy as a
11 condition of the award? If so, can we require annualized
12 payments?"

13 Question three: "Can we get copies of testimony
14 from the following, Rochelle Cope, Julie Ellis, Jovine
15 Umali?"

16 Question four: "Do we have the option to answer
17 the questions in the special verdict form with answers that
18 are not indicated?"

19 The Court's response: "The answer to questions
20 two, three and four is no."

21 And the final question that came out -- actually
22 the penultimate question that came out: "End of case
23 instructions ask us to determine the amount of money that
24 will reasonably and fairly compensate the plaintiff for such
25 damages as you find were proximately caused by the

1 defendant. Are the answers to satisfy the instructions and
2 question number nine of the special verdict form the same
3 dollar amount?"

4 The Court's response: "Yes."

5 Final question: "Is the amount to be indicated
6 in question nine the amount to be paid by the defendant or
7 is this an amount to be further divided by previously
8 indicated percentages as in question eight?"

9 The Court's response: "Please carefully review
10 your special verdict form."

11 These are actually made a part of the record.
12 Anything further, Counsel?

13 MR. TILDEN: Nothing, your Honor.

14 MR. KOSOFF: Nothing further.

15 THE COURT: Gentleman, I want to say one thing.
16 These are difficult cases, no doubt about it, from both
17 sides. A lot of emotion. Everybody acknowledges that
18 Mr. Kelly went through a lot. It is not deserved by any
19 person, much less any kid. From my perspective, I just want
20 to say that it has been a pleasure to have such competent
21 counsel in a case like this. When I came to federal court I
22 had such high hopes that this is what I would see all the
23 time. Unfortunately it doesn't quite work out that way. I
24 am really glad we had a jury to make this determination. I
25 am glad I didn't have to make this kind of factual

1 determination. But it was an absolute pleasure watching
2 very good, professional individuals practicing their craft
3 in front of me. Thank you.

4 MR. PFAU: Thank you.

5 THE COURT: We will be in recess.

6 (Adjourned.)
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CERTIFICATE

I, Barry L. Fanning, Official Court Reporter, do hereby
certify that the foregoing transcript is true and correct.

S/Barry L. Fanning

Barry L. Fanning